IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 570 OF 1988

M/s. Vijay Oil Mills, Chakan. ... Appellants

V/s

Waman Ganpat Jagtap
(since deceased by his heirs)
Ulhas Wamanrao Jagtap & ors. ... Respondents

Shri N.B. Shah for the appellants.

Shri J.C. Satpute for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. The appellant defendant has filed this appeal against the judgment and order passed by the Addl. District Judge, Pune, on 1.8.1986 dismissing the appeal and allowing the cross-objection of the plaintiff with direction to the defendant-appellant to deliver possession of the electrical transformer as described in the Court Commissioner’s report within a period of two months alongwith the hire purchase charges of Rs.4,800/-

with separate enquiry in regard to mesne profits shall be conducted as provided in Order 20 Rule 12(1)(C) of the Code of Civil Procedure.

By this order, the order passed by the Joint Civil Judge, Jr. Divn., Pune, on 22.8.1988 came to be confirmed.

3. The plaintiff filed the suit for recovery of possession of the electrical transformer alleged to have been given on hire basis to defendant alongwith the hire charges of Rs.4,800/-. It was alleged that the transformer was given to the defendant on hire basis in the year 1975 at the rate of Rs.400/- p.m. payable in advance. The defendant had taken the said transformer for some period only on hire, however, he did not return the said transformer and issued the notice dated 11.12.1978 maliciously by making false allegations and claiming the right, title and interest over the said electrical transformer. The plaintiff had issued one notice on 15th December, 1978 to defendant calling upon him to pay arrears of hire charges and to return the electrical transformer but in vain. Hence the suit came to be filed.

Defendant resisted the suit inter-alia on the ground that the electrical transformer was never taken on hire charges at the rate of Rs.400/- p.m. but there was an agreement between the plaintiff and defendant in respect of the said electrical transformer and as per the said agreement, the transformer was transferred to the defendant and plaintiff was no more owner thereof. The suit was also challenged on the ground of jurisdiction as well as on the plea to the effect that the suit was barred by limitation. On such and other grounds, the suit was sought to be dismissed with costs.

The learned Trial Judge adjudicated the suit on merits and came to the conclusion that the suit was within limitation and the Court had jurisdiction to entertain the suit. It was also held that the plaintiff had succeeded in establishing that the impugned transformer was given on hire at the rate of Rs.400/- per month to the defendant and defendant failed to pay the hire charges and, as such, the suit came to be decreed.

The appeal was carried to the District Court. The learned Addl. District Judge dismissed the appeal upholding the order passed by the lower Court. The cross-objection filed by the plaintiff was also allowed

and hence the present appeal is filed.

4. At the time of admission of this appeal, substantial questions were raised to the effect that -

(1) Whether the claim of the respondent was within limitation ?

(2) Whether the decretal direction for ascertainment of pendente-lite and future damages is legal ?

(3) Whether the decree for return of the transformer without providing the alternative vide Order 20 Rule 10 of the C.P.C. is illegal ?

5. The learned counsel for both parties have taken me through the pleadings as well as the evidence of both sides. The defendant did not lead any evidence, whereas the plaintiff entered the witness box. Both parties relied upon the documents on record. So far as we are concerned, at this stage, it would be necessary to refer to the notices issued by both parties which are part of the record. The learned counsel for the appellant

initially submitted that the notice Exh.31/1 dated 11th December, 1978 was issued by the defendant to the plaintiff, which, in my considered view, would settle the issue of limitation.

It is the case of the plaintiff that the suit transformer was given on hire in the year 1975 on monthly basis at the rate of Rs.400/- per month. On the other hand, it is the case of the defendants that the transformer was handed over to him under the agreement of sale and, therefore, that transformer was owned by him as he had paid the requisite charges. On this basis, the defendant came with the plea that the suit filed in the year 1979 was barred by limitation as contemplated under Article 70 of the Limitation Act as the suit was not filed within three years from the date of refusal to transfer the transformer by the defendant as was averred in the plaint. The appellant - defendant sought to rely upon the plaintiff’s pleading in para 3 of the plaint to the effect that the transformer was given to the defendant on monthly hire of Rs.400/- p.m. payable in advance and defendant failed to pay the amount of hire charges as agreed. The plaintiff from time to time requested the defendant to return the same transformer and pay the arrears of hire charges but the defendant did not return

the transfer. This particular pleading, according to the appellant-defendant, amounts to refusal to return the transformer in the year 1975 and, therefore, the suit is said to be hit by law of limitation vide Art. 70. However, it is to be noted that, inspite of para 3 of the plaint, the plaintiff has made it clear in para 5 of the plaint that the plaintiff was claiming charges of Rs.400/- from November 1978 till the filing of the suit which came to Rs.4,800/-, thereby suggesting that he had raised the hire charges till the end of October, 1978. In my considered view, this submission made on behalf of the respondent appears to be more acceptable especially in view of the contents of defendant's own notice dated 11.12.1978 which suggests in categorical terms that plaintiff had given the transformer to the defendant on monthly hire/rent basis of Rs.400/- for the period of 10 years and rent thereof was paid to the plaintiff from time to time and till December, 1978 it was so paid. If this averment in the defendant's own notice is taken into account, then the question of limitation is automatically answered to the effect that the cause of action for the suit occurred in the year 1978 and, therefore, the suit filed in the year 1979 was within limitation. The leanred lower appellate Court has, therefore, rightly concluded that the suit is within limit and I do not see

any reason to interfere with the same finding.

6. The second contention sought to be raised on behalf of the appellant was that territorial jurisdiction of the suit. Mr. Shah, learned counsel for the appellant sought to rely upon the provision of Sec.16 (1) which stipulates that subject to the pecuniary or other limitations prescribed by any law, suits for the recovery of movable property actually under distraint or attachment shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. On the basis of this provision, Mr. Shah submitted that the suit should have been filed at Tal. Khed where village Chakan is located and not at Pune proper. In support of his argument, he tried to rely upon the definition of "distrained" given in the Law of Laxicon which reads thus,

> "The phrase 'distraining' or 'having distrained' expresses the notion of a process or action that continues rather than a process or action comprising one single act."

However, if we take into account the scope of Sec.16 in general, it is quite clear that the term "distrained" is

used synonimous to the term "attachment" and, therefore, unless the clogs in question are under distraint or attachment as contemplated by the said definition, the jurisdiction cannot be said to be with the Civil Court, Khed, especially in view of the provisions of Sec.20 where the defendant shall reside. Therefore, I do not subscribe to the view that the learned Trial Judge had no jurisdiction to entertain the suit at Pune.

7. The lower Court, while passing the decree has directed that the separate enquiry in regard to mesne profit should be conducted as provided in Order 20 Rule 12(1)(C) of the C.P.C. It is needless to mention that the said provision would not be applicable to the present facts involved in the dispute because the suit is relating to the movable property and not immovable property to which the said provision applies. Therefore, the said clause will have to be omitted from the impugned order of the learned Addl. District Judge, Pune. This Court, while admitting the appeal, had directed the defendant to deposit the amount of Rs.25,000/- with directions to invest the same in any nationalized bank and accordingly the defendant has deposited the said amount. The fate of the amount was also to be determined at the time of disposal of the appeal. Since the appeal is being disposed of by

dismissal, the amount shall be paid to the plaintiff with accrued interest thereon.

With these directions, the appeal stands dismissed with no order as to costs.

The amount deposited in the lower Court shall be paid to the respondent plaintiff with accrued interest, by the lower Court.

8. It is clarified that since the cross-objection of the plaintiff was allowed by the lower Appellate Court, enquiry in that regard shall be held by the executing Court if execution proceeding filed under Order 21 Rule 31 of the C.P.C., by the plaintiff.

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